

<sup>1</sup> See 47 C.F.R. § 54.719.

funding exclusively used to support Priority One telecommunications connectivity.<sup>2</sup> The funding requests that were the subject of the COMAD were all listed as being for Internet access. The Request asks that the FCC find, as a matter of fact, that SCTCLA had in place a draft Technology Plan prior to the posting of the FCC Form 470, or in the alternative, that a waiver of the Technology Plan requirement is warranted. This Supplement highlights certain legal developments that have occurred since the filing of the Request.

#### **I. Recent Modifications to E-rate Program Management**

On September 28, 2010, the FCC released its Sixth Report and Order in its E-rate Docket which streamlines certain administrative requirements of the E-rate application process.<sup>3</sup> Most notably, the FCC eliminated the Technology Plan requirement for applicants seeking Priority One telecommunications connectivity support. The R&O thus expanded the number of applicants no longer subject to this requirement from those seeking POTS reimbursements to all applicants seeking reimbursement for any Priority One telecommunications connectivity.

The R&O finds that the Technology Plan requirement is an unnecessarily burdensome requirement for most applicants, and that even without it, applicants continue to evaluate technological needs through technology planning. The R&O also concluded that the change would reduce the administrative costs on E-rate participants.<sup>4</sup> The R&O thus underscores the arbitrary nature of the result reached by the COMAD.

It is clearly inequitable, if not unlawful, to deny funds paid to a service provider for services properly provided, based upon the violation of a regulatory requirement that has been found to be unnecessary to achieve the statutory purpose of the E-rate program and to impose

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<sup>2</sup> See *Letters from USAC to Mary Toscano*, dated July 21, 2010, attached as Exhibit G to the Request.

<sup>3</sup> See *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, FCC 10-175 (2010) (R&O).

<sup>4</sup> R&O at ¶ 61.

unnecessarily burdensome requirements on applicants.<sup>5</sup> Moreover, as the factual record in the Request showed, the applicant endeavored in good faith to comply with the FCC's E-rate rules and, as the KPMG report itself concluded, did not engage in any fraud, waste or abuse of program funds.

## **II. Recent FCC Decisions**

The FCC also recently granted the appeals of eleven E-rate applicants that had applied for E-rate funds as consortia.<sup>6</sup> The USAC denials were based on the applicants' failure to comply with FCC rules requiring letters of agency ("LOA") issued in connection with consortia applications.

In granting the appeals and reversing USAC's funding denials, the FCC found that strict enforcement of certain regulatory requirements relating to the LOAs would result in an unfair penalty to consortium members when there was no evidence of waste, fraud, misuse of funds or failure to adhere to core program requirements.

As the decision makes clear, one important purpose of the appeal process is to make sure that strict enforcement of USAC's requirements does not produce results so harsh that they undermine the goals of the E-rate program. The present appeal is consistent with that purpose.

## **III. Conclusion**

Grant of SCTCLA's appeal is necessary to prevent an arbitrary and inequitable result. It would be contrary to the public interest to seek recovery of the funds for failure to comply with a regulatory requirement that has been found to be unnecessary and burdensome. SCTCLA has substantially complied with the FCC's Rules, including the rule that required it to have a written, State-certified Technology Plan in place before it received services funded by its FY2005 Form

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<sup>5</sup> *Id.* at ¶ 60.

<sup>6</sup> See *Requests for Review of the Decisions of the Universal Service Administrator by Cornerstones of Care, et al.* CC Docket 02-6, Order, DA 10-2071 (2010) (*Appeal*).

470 application. SCTCLA therefore respectfully reasserts its request for either a declaration from the FCC finding that it had substantially complied with the FCC's rules or, in the alternative, that good cause exists for granting SCTCLA a limited waiver of § 54.504(b)(2)(vii) of the FCC's Rules *nunc pro tunc*.

Respectfully submitted,  
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